

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION**

CIVIL ACTION NO. 04-11467-MAP

DOUGLAS DYNAMICS, INC., <div style="text-align: right;">Plaintiff</div>)	
)	
v.)	MOTION FOR ATTACHMENT
)	ON TRUSTEE PROCESS
B&P SUPPLY, INC.,)	
Defendant)	
)	

The plaintiff and judgment creditor, Douglas Dynamics, Inc. (hereinafter “Judgment Creditor”), hereby moves this Court, pursuant to Fed. R. Civ. P. 69 and Mass. R. Civ. P. 4.2, for attachment on trustees process in the amount of \$139,247.93 upon monies, goods, effects and credits of the defendant and judgment debtor, B&P Supply, Inc. (hereinafter “Judgment Debtor”) deposited or held in the hands of Berkshire Bank, Pittsfield, Massachusetts. The grounds for this motion are set forth below.

Background

The Judgment Creditor commenced legal action against the Judgment Debtor by filing a Complaint on June 28, 2004. Dkt. No.1. The Complaint sought recovery for merchandise sold by the Judgment Creditor to the Judgment Debtor. Dkt. No. 1. The Judgment Creditor completed Service of the Summons and Complaint on the Judgment Debtor on July 15, 2004. Dkt. #2. The Judgment Debtor filed an Answer to the Complaint on November 19, 2004. Dkt. No. 13. The Judgment Creditor filed a Motion for Summary Judgment on July 15, 2005. Dkt. No. 30. The Court allowed the Judgment Creditor’s Summary Judgment Motion on October 18, 2005 and entered judgment in favor of Douglas in the amount of \$118,727.12. Dkt. Nos. 44, 45. B&P filed a Motion to Vacate the Court’s Order allowing summary judgment, which the Court

denied on February 6, 2006. Dkt. Entry 11/03/05 (no number). The Court modified the Judgment in favor of Douglas on February 6, 2006, increasing the Judgment to \$139,247.93 based on the addition of attorneys' fees and interest. Dkt. Nos. 52, 53.

The Judgment Debtor took no appeal of the Judgment within the time allowed for such appeal. Accordingly, the Court issued a First Execution on the Judgment on or around March 12, 2003, which the Judgment Creditor caused to be served on the Judgment Debtor by sheriff. The Judgment Debtor has failed to pay the Judgment or otherwise make arrangements to pay such Judgment.

Upon information and belief, the Judgment Debtor conducts banking at Berkshire Bank in Pittsfield, Massachusetts.

Argument

Under Fed. R. Civ. P. 69, "[t]he procedure on execution [of a judgment], in proceedings supplementary to and in aid of judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held" Massachusetts procedure provides for attachment of bank accounts of a defendant or debtor on trustee process. Mass. R. Civ. P. 4.2. A motion for trustee process may be filed any time after commencement of the underlying action, including after judgment has issued. Mass. R. Civ. P. 4.2(a); see generally Shapiro, Perlin and Connors, Massachusetts Collection Law, § 547 (noting that "as with regular attachments, there appears to be no prohibition against a plaintiff seeking approval of a trustee attachment *after* judgment has entered . . ."). An order approving trustee process may be issued where the Judgment Creditor shows a "reasonable likelihood that plaintiff will recover judgment." Mass. R. Civ. P. 4.2(c).

In the present case, judgment has already entered in favor of the Judgment Creditor against the Judgment Debtor, which is more than sufficient to satisfy the “reasonable likelihood” standard under Mass. R. Civ. P. 4.2(c). Accordingly, Judgment Creditor’s Motion for Attachment on Trustee Process should be allowed.

Dated: November 3, 2006

Respectfully submitted,

DOUGLAS DYNAMICS, INC.
By its attorney,

/s/ Jeffrey E. Poindexter
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